

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DAVID WALDRIFF,

Petitioner,

v.

JOHN SAXTON,

Respondent.

ORDER
08-CV-206A

The above-referenced case was referred to Magistrate Judge Jeremiah J. McCarthy, pursuant to 28 U.S.C. § 636(b)(1)(B). On March 29, 2011, Magistrate Judge McCarthy filed a Report and Recommendation, recommending that the petition for a writ of habeas corpus be denied.

The Court has carefully reviewed the Report and Recommendation, the record in this case, and the pleadings and materials submitted by the parties, and no objections having been timely filed, it is hereby

ORDERED, that pursuant to 28 U.S.C. § 636(b)(1), and for the reasons set forth in Magistrate Judge McCarthy's Report and Recommendation, petitioner's petition for a writ of habeas corpus is denied.

The Court finds that petitioner has failed to make a substantial showing of the denial of a constitutional right and therefore denies a certificate of appealability. 28 U.S.C. § 2253(c)(2).

The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from this judgment would not be taken in good faith, and therefore denies leave to appeal *in forma pauperis*. Further requests to proceed on appeal *in forma pauperis*

must be filed with the United States Court of Appeals for the Second Circuit in accordance with the requirements of Rule 24 of the Federal Rules of Appellate Procedure.

The Clerk of Court shall take all steps necessary to close the case.

SO ORDERED.

s/ Richard J. Arcara

HONORABLE RICHARD J. ARCARA
UNITED STATES DISTRICT JUDGE

DATED: April 25, 2011